

# STANDARD CONDITIONS OF SALE AND SUPPLY

## 1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following expressions shall have the meanings here as described to them unless the context requires otherwise: "Buyer" the person who accepts a quotation of the Company for the sale of the Goods or whose order for the goods is accepted by the Company. "Goods" the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions. "the Company" Dunedin Builders Merchants Ltd "Conditions" the standard terms and conditions of sale set out in this document and includes any special terms and conditions agreed in writing between the Company and the Buyer. "Contract" the contract for the purchase and sale of the Goods

1.2 All headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2 BASIS OF THE SALE

2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless previously agreed in writing between the authorised representatives of each of the Buyer and the Company.

2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company's authorised representative in writing. In entering into the Contract the Buyer acknowledged that it does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

## 3 ORDERS AND SPECIFICATIONS

3.1 No liability is accepted by the Company for the accuracy of verbally orders placed verbally by the Buyer, not backed up with a written confirmation.

3.2 The Buyer shall be solely responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for providing to the Company any necessary information relating to the goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Company) but in either case shall be subject always to these Conditions. For the avoidance of doubt quotations given to the Buyer by the Company shall be deemed to have lapsed insofar as no written order has been received by the Company from the Buyer in connection with the subject matter of the quotation within 30 days of the date of the quotation.

3.4 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss including loss of profit, costs including the cost of all labour and materials used, damages, charges and expenses incurred by the Company as a result of such cancellation.

#### 4 PRICE OF THE GOODS

4.1 The price of the Goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the order unless otherwise agreed in writing by the Company. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Company without giving notice to the Buyer.

4.2 The Company reserves the right, by giving notice to the Buyer at any time after acceptance of an order and before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company, including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any specification or other instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

4.3 Quoted prices shall include all standard delivery costs in respect of single delivery orders of £500 (net) or over. All orders of a lesser value may incur an additional handling and carriage charge to be set out in advance. Where the Buyer requires delivery of Goods by means of a mode of transport other than the standard delivery mode offered by the Company, all extra costs all extra costs involved therein will be added to the order.

4.4 The price is exclusive of any applicable value added or other sales tax, which the Buyer shall be additionally liable to the Company.

4.5 The cost of pallets and returnable packing will, at the discretion of the Company, be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Company before the due payment date.

#### 5 TERMS OF PAYMENT

5.1 Subject to any special terms agreed previously between the Buyer and the Company, the Company shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the goods.

5.2 Unless otherwise agreed by the Company in writing the Buyer shall not be entitled to any discount or rebate in respect of the Goods.

5.3 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) unless agreed otherwise within 30 days of receipt by the Buyer of the Company's invoice, and the Company shall be entitled to recover the price of the Goods, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.

5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

5.4.1 cancel the Contract or suspend any further deliveries of the Goods to the Buyer;

5.4.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and

5.4.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4% per annum above the base lending rate of Barclays Bank Plc from time to time, until payment in full is made (a part of a month being treated as a full month for calculating interest).

5.4.4 The buyer will reimburse to the Seller all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

## 6 DELIVERY

6.1 Delivery of the Goods shall be made by the Company delivering or procuring the delivery of the Goods to the Buyer's premises or such other address as is notified to the Company in advance of delivery.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where delivery of the Goods is to be made by the Company in bulk, the Company reserves the right to deliver up to 10% more or 10% less than the quantity ordered and the quantity so delivered shall be deemed to be the quantity ordered, and the price shall be adjusted accordingly.

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 If the Company fails to deliver the Goods, or any instalment, for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess, if any, of the cost to the Buyer in the cheapest available market of similar goods to replace those not delivered over the price of the Goods.

6.6 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery, otherwise than by reason of any cause beyond the

Buyer's reasonable control or by reason of the Company's fault, then, without prejudice to any other right or remedy available to the Company, the Company may;

6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs, including insurance, of

6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7 RISK AND PROPERTY 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.

7.3 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all moneys owing by the Buyer to the Company shall, without prejudice to any other right or remedy of the Company forthwith become due and payable.

## 8 WARRANTIES AND LIABILITY

8.1 Subject to the conditions set out below the Company warrants that the Goods will materially correspond with their specification at the time of delivery.

8.2 The above warranty is given by the Company subject to the following conditions:

8.2.1 the Company shall be under no liability in respect of any defect in the Goods arising from any design or specification supplied by the Buyer;

8.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions, whether oral or in writing, misuse or alteration of the goods without the company's approval;

8.2.3 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.3 Any claim by the Buyer which is based on any defect in the quantity, quality or condition of the Goods or their failure to correspond with specification shall, whether or not delivery is refused by the Buyer, be notified to the Company within 5 working days from the date of delivery. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer be bound to pay the price for the Goods as if the goods had been delivered fully in accordance with

the Contract. For the avoidance of doubt, where the Goods have been bought for resale the Company shall not accept any responsibility for such defects or failures once the Goods have left the Buyer's premises or control, as the case may be.

8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods, or such defective batch, free of charge or, at the Company's sole discretion, refund to the buyer the price of the Goods, or a proportionate part of the price, but the Company shall have no further liability to the Buyer.

8.5 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation, unless fraudulent, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage, whether for loss of profit or otherwise, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

8.6 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control.

## 9 TERMINATION

9.1 The Company shall be entitled to cancel the Contract or, at its discretion, suspend any further deliveries under the Contract without liability to the Buyer in the event that:

9.1.1 the Buyer makes any voluntary arrangement with its creditors; or

9.1.2 (being a company) becomes subject to an administration order; or

9.1.3 goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Buyer; or

9.1.4 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.5 the Buyer ceases, or threatens to cease, to carry on business; or

9.1.6 the Company reasonably apprehends that any of the events set out above is about to occur in relation to the Buyer and notifies the Buyer accordingly. 9.2 In the event of a termination of the Contract any Goods which have been delivered but not paid for the price shall become immediately due and payable by the Buyer notwithstanding any previous agreement or arrangement to the contrary.